



November 9, 2016

The Election and Healthcare Reform

On November 8, 2016, Donald J. Trump was elected the 45th President of the United States of America. As of Wednesday morning, Mr. Trump had won 276 electoral votes – 270 electoral votes were needed to win the Presidential election. Mrs. Hillary Rodham Clinton (again as of Wednesday morning) had won 218 electoral votes.

In addition to reclaiming the Presidency, the Republican Party also retained control of both chambers of Congress. When the 115th United States Congress is sworn into office, the Republicans will hold at least 51 Senate seats and 236 seats in the House of Representatives (218 seats are required to win a majority).

Though Election Day marks the end of political ads for some time, it also marks the beginning of “speculation-season” around what the new administration will attempt to accomplish once it is sworn into office. Of particular interest is speculation around the issue of healthcare reform. Many healthcare experts, even before the election, opined that the Patient Protection and Affordable Care Act (“PPACA”) has failed to live up to all of its promises. A recent government report found that, on average, premiums will rise 25 percent and consumers will have fewer insurance company choices in 2017. Eighty-three insurers will stop offering plans through the Marketplaces next year, while only 16 insurers will enter. In addition, approximately 21 percent of enrollees will only have one insurer to choose from. As such, irrespective of which candidate had won the election, it was expected that revisions to PPACA were required to ensure the long term viability of the law. Now that Mr. Trump has won the election, the changes to PPACA and to healthcare reform in general will likely be much more dramatic, but the nature of those changes is still unclear.

To assist clients, we have provided a brief summary of some of Mr. Trump’s positions around healthcare reform. For Mr. Trump to move legislation forward, he may need some Democratic support because the Republicans failed to win a filibuster-proof majority in the Senate – Republicans needed 60 seats to prevent filibustering. In addition, it is important to remember that it may take substantial time for some of these initiatives to move forward, and no official action will be taken until January 20, 2017 – inauguration day – at the earliest.

The House Republican Plan to Replace PPACA

While Mr. Trump has regularly discussed a full repeal and replacement of PPACA, he faces some challenges in making that occur. Since the Republicans do not have 60 seats in the Senate, the Democrats would be able to filibuster any PPACA repeal and replace bill. It would be possible for the Senate to use a process known as reconciliation, which requires only 51 votes, to repeal the law. However, repeal without any replacement plan could mean more than 20 million individuals (many of them as a result of Medicaid expansion) would lose their health insurance coverage. Republicans in Congress, many of whom are facing re-election in 2018, would most likely be unwilling to repeal PPACA without some type of

replacement plan as well. The Republicans could use a strategy of leveraging reconciliation to repeal the entire Act (including Medicaid expansion and subsidies on exchanges), but delay the repeals going into effect for 12 or 18 months. During this period they would attempt to work with Democrats to come to a consensus on a replacement.

Many political pundits expect the new administration's efforts will rely primarily upon the 37-page white paper released by House Republicans on June 22nd of this year. The white paper (click [here](#)) includes many of the ideas that have been proposed by Republicans over the past 25 years. Assuming that white paper creates the foundation for future healthcare reform efforts, we highlight significant aspects of the paper that may form the basis for Mr. Trump and Congress' path forward.

The House Republican plan seeks to ensure access to health coverage for all Americans by retaining employer-based coverage and providing a refundable tax credit to households without an offer of an employer-based plan. While the House Republican plan, by necessity, has a structure that is similar to PPACA in this regard, with a large employer-based insurance system and tax credits for those outside of it, the plans are very different in their details.

The House Republican plan would repeal the 40 percent excise tax on so-called Cadillac plans and replace it with an upper limit on the federal tax preference for employer-paid premiums. While the exact threshold has not been specified, it has been suggested that initially it would be set at a level that exempts the vast majority of employer-sponsored plans. Persons who are not offered employer coverage would be eligible for refundable federal tax credits to help them purchase health insurance. The federal tax credits could be used to purchase any state-approved insurance plan, and individuals would be allowed to deposit any unused amount into a Health Savings Account.

While the House Republican plan would eliminate both the Employer Mandate as well as the Individual Mandate, it would retain certain popular patient protection provisions of PPACA. For instance, the plan would allow young adults to stay on their parents' health plan to age 26, ban insurers from charging people with pre-existing health problems higher premiums, and forbid insurers from dropping coverage if a policyholder gets sick. Moreover, the plan would introduce \$25 billion in new funding for high risk pools. These high risk pools will seek to depress the premiums of all consumers in the individual insurance market by directly subsidizing the sickest individuals in the market.

In addition to changes in the both the individual market and employer-sponsored market, the House Republican plan proposes giving states significantly more flexibility with Medicaid, with each state having the option of either a block grant with a set amount of federal funding for the program or a "per capita allotment," which would provide funding based on each state's beneficiaries. The plan also proposes giving seniors on Medicare the option of getting private healthcare plans paid for or offset by Medicare. However, the white paper stresses that it will not be a voucher program, but that the payments would go directly to the insurance company.

Conclusion

The House Republicans have referred to their plan as a "framework" and likened it to the white paper issued just after President Barack Obama's election by then Senate Finance Committee Chairman, Max Baucus, a Democrat. That document foreshadowed many of the key elements of PPACA, which was

signed into law approximately 18 months after Senator Baucus' white paper was released. Moreover, the House Republicans acknowledge that additional specifics are required and have indicated that those specifics will be determined next year by congressional committees. As such, many questions remain. The one certainty is that change is coming. What form that change may take is yet to be determined, but as always, as new details are released and developments warrant, Gallagher will provide you with timely analysis.

Gallagher Benefit Services, through its compliance experts and consultants, will continue to monitor developments on healthcare reform legislation and regulation and will provide you with relevant updated information as it becomes available. In the interim, please contact your Gallagher Benefit Services Representative with any questions that you may have.

The intent of this analysis is to provide general information regarding the provisions of current healthcare reform legislation and regulation. It does not necessarily fully address all your organization's specific issues. It should not be construed as, nor is it intended to provide, legal advice. Your organization's general counsel or an attorney who specializes in this practice area should address questions regarding specific issues.